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RAILROADS—NEGLIGENCE—PEDESTRIANS—DUTY TO KEEP A LOOKOUT.—MCCLANAHAN V. VICKSBURG, 35 SO. 903 (LA.).—While intoxicated, a man entered upon a railroad track in the daytime in the open country and fell on the track. While lying in this position he was killed by a train, the engineer not seeing him until within a short distance. *Held,* that, while the deceased was guilty of contributory negligence, the failure of the engineer to keep a closer lookout was such negligence as to justify a recovery. Provosity, J., *dissenting.*

Whether a railroad company is liable to a trespasser to maintain a strict lookout is a widely disputed question. *Yarmal v. Railroad,* 75 Mo. 575; *Smith v. Railroad,* 14 N. C. 728; *Patton v. Railroad,* 89 Tenn. 370; *Memphis & C. R. Co. v. Womack,* 84 Ala. 149; *Denman v. St. P. & D. R. Co.,* 26 Minn. 357. And even while it may owe such a duty to its passengers, this does not imply a corresponding duty toward a trespasser. *N. Y., N. H. & H. R. R. Co. v. Kelly,* 35 C. C. A. 571. It would seem that in the States where such a liability is placed upon the railroad company, a like responsibility would rest upon a trespasser, since the danger is equally obvious to either. But in such a case it has been held that if the engineer, in the exercise of reasonable care, might have avoided the accident, the company will be liable. *B. & O. R. Co. v. Hellenthal,* 31 C. C. A. 414; *Kirthy v. C. M. & St. P. R. Co.,* 65 Fed. 386; *B. & O. R. Co. v. Anderson,* 85 Fed. 413; *Chicago, N. W. R. Co. v. Donahue,* 75 Ill. 106; *Wood, R. Law* (2d ed.), 1468. This would seem to be a reasonable rule, since no one is justified by the negligence of another in taking his life, through either intent or negligence. The question of the responsibility of a railroad company to a trespasser to maintain a lookout is entirely unsettled, but once the danger is discovered, nothing less than the utmost efforts to prevent the accident will relieve it.

STREET AND INTERURBAN RAILROAD—ANNEXED TERRITORY—CONTRACTS.—IND. RY. CO. V. HOFFMAN, 69 N. E. 399 (IND.).—There was a contract between a city and a street railway company by which the company agreed to transport passengers on transfers upon any of its lines within the city limits. *Held,* that where the city subsequently in the exercise of its governmental power extended its limits, the company was bound to carry passengers upon its interurban line to the new city limits without extra charge.

This seems to be the first decision on this point in this court. The case holds that a city may increase the benefits which it derives from a contract without the consent of the other party on the ground that the possible exercise of this governmental power of extension must have been in contemplation of the parties. It is well established that the contract of a municipality cannot be altered or abrogated without the consent of both parties. 20 *Am. & Eng. Ency.,* 1157; *Sawyer v. Concordia,* 12 Fed. Rep. 754; *Nelson v. Parish,* 111 U. S. 716. A city is not excused from its contract where it fails to exercise its governmental power and as a result is unable to receive any benefit from the contract. *Murray v. Kansas City,* 47 Mo. App. 105. As tending to support the present decision it has been held that a legislative act modifying the territorial limits of a city is not unconstitutional although it operates to decrease the security of prior creditors. *State v. Lake City,* 25 Minn. 404; *Wade v. City of Richmond,* 18 Gratt. (Va.) 583 The court in the principal case relies almost entirely upon the principle that municipal ordinances become operative within the annexed territory as a natural consequence of the annexation. *Toledo v. Edens,* 59 Ia. 352.

STREET RAILWAYS—RIDING ON CAR STEPS—LIABILITY FOR INJURIES.—MOSKOWITZ V. BROOKLYN HEIGHTS R. CO., 85 N. Y. SUPP. 960.—*Held,* that a person who elects to ride on the steps of a crowded street car, and who is thrown off by the oscillation of the car while it is running at the customary rate of speed, assumes the risk of injuries so occasioned. Hirschberg and Woodward, JJ., *dissenting.*

While riding on the platform or steps of a steam railroad car is generally regarded as negligence *per se, Goodwin v. R. Co.,* 84 Me. 203, it is not so considered as to street cars, *Cummings v. R. Co.,* 166 Mass. 220. In many cases, however, it is said to constitute such negligence as to preclude a recovery for resulting injuries, unless the crowded condition of the car makes it necessary: *Tham v. Traction Co.,* 191 Pa. St. 249; *Archer v. R. Co.,* 87 Mich. 101. In *Ayers v. R. Co.,* 156 N. Y. 104, it was held that a passenger on a street car assumes the risks ordinarily incident thereto, and the tendency of the New York decisions seems to in harmony with this view. The dissenting opinion in the present case contends that a common carrier inviting a passenger for hire to occupy a precarious position upon the platform impliedly represents that the car will be so run as to insure his safety. See *Nolan v. R. Co.,* 87 N. Y. 63; *Wilde v. R. Co.,* 163 Mass. 533; *Pomashi v. Grant,* 119 Mich. 675.

SURETIES—OBTAINING PREFERENCES—INUREMENT TO CO-SURETIES.—CAMPAU V. DETROIT DRIVING CLUB, 98 N. W. 267 (MICH.).—A part of the sureties on a forfeited bond liquidated their *pro rata* share of the indebtedness, subsequently levying on the property of the principal. *Held,* that the assets so required did not inure to the benefit of the co-sureties. Hooker, C. J., and Montgomery, J., *dissenting.*

The court reasons that the relation of co-suretyship was severed upon payment by part of the sureties of their proportion of the principal debt. They then apply the doctrine that indemnity given to the surety after the debt has been discharged does not inure to the benefit of co-sureties, *Gould v. Fuller,* 18 Me. 364; *Moore v. Isley,* 22 N. C. 374. While the general rule is that indemnity obtained by one of several sureties prior to the determination of the relation is subject to the claim of all, *Guild v. Butler,* 127 Mass. 386; *Berridge v. Berridge,* 44 Ch. Div. 168; yet when the debt is paid in equal proportion, the equities cease, and co-sureties are not entitled to share in the indemnity subsquently obtained from the principal, *Messer v. Swan,* 4 N. H. 481. The dissenting opinion points out that the doctrine followed has been applied only in those instances where the full amount of the debt was paid; whereas in the present case only a *pro rata* share was liquidated; and contends that equity should not ingraft upon the general rule an exception that will enable one co-surety to overreach another.

TRUSTS—SAVINGS BANK—DEPOSITS IN TRUST FOR ANOTHER.—IN RE TOTTEN, 85 N. Y. SUPP. 928.—Where one deposits funds in trust for another, without knowledge of beneficiary, and subsequently withdraws such accounts, *held,* that, after the depositor's death, the *cestui que trust* can recover from the estate of the deceased the amount of the deposits.

This class of voluntary trusts has given rise to an irreconcilable conflict